

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Applications of

Caroline K. Powley
d/b/a UNICORN SLIDE

TRUDY M. MITCHELL

For Construction Permit
Slidell, Louisiana

) MM Docket No. 92-308

) BPCT-900518KO

) BPCT-900726KG

RECEIVED

MAR 10 1993

TO: Administrative Law Judge
Richard L. Sippel

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF TRUDY M. MITCHELL

Trudy M. Mitchell ("Mitchell") filed March 5, 1993 a REQUEST FOR ITEMIZATION OF EXPENSES suggesting that this proceeding might be expedited if Caroline K. Powley ("Powley") were to submit itemized expenses claimed by her in connection with the settlement of this case. On the same date (and unbeknownst to Mitchell), Powley submitted a further Supplement to her list of expenses consisting of some 42 pages, in the main, copies of telephone bills.

In a further and continuing effort to expedite approval of the settlement between Powley and Mitchell, Mitchell offers these comments, related to the additional expenses claimed by Powley in her March 5, 1993 Supplement.

Commission must of course in approving settlement expenses keep in mind §73.3525(3) of the rules which provides that an applicant submit an affidavit setting forth:

A certification that neither the applicant nor its principals has received any money or consideration in

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excess of the legitimate and prudent expenses of the applicant. . .

In approving expenses for payment for dismissal of Powley's application, the Commission must evaluate the legitimacy and prudence of her claimed expenses. Powley has previously submitted legal expenses of \$18,269.11 and "Facilitator" expenses of \$15,000/\$10,500/\$7,500 (plus out-of-pocket of exactly \$500.00). No detailed itemization has been provided for either of these claims and in order to establish a complete record, Mitchell previously suggested such an itemization.

Turning to the new claims, Mitchell notes that during the course of this proceeding, Powley was an applicant for FM or television stations at (1) Centerville, Texas (BPH-900518MP), (2) Manistee, Michigan (BPH-900518MQ), (3) Springville, New York (BPCT-911029KG), (4) Rio Grande City, Texas (BPCT-911029KP) and (5) was an applicant for TV station WPAJ, Danville, Virginia.

Powley's father, John R. Powley, was the owner of WIIM(TV), Iron Mountain, Michigan. In an amendment to her Slidell application, Powley reported February 11, 1992 that

The applicant's parents, John R. and Sandra B. Powley, own jointly a share in a limited partnership, CHRISTIAN VOICES. CHRISTIAN VOICES plans to purchase existing AM radio stations and program them with religious programs. Assignment of license from DeFuniak Communications to Christian Voices for radio station WJGC(AM), Jacksonville, FL (BAL-911002EA) has been filed.

Thus, in determining how much Powley has spent or obligated herself to spend in connection with filing and prosecution of her Slidell application, such amount must be segregated from the total amount

expended in filing and prosecution of some seven other applications of her own or her parents.

In this connection, Mitchell states that she is not of the opinion that Powley has "padded her expenses" or sloughed onto Slidell some of the expenses incurred by applications for Centerville, Texas, Manistee, Michigan, Springville, New York, Rio Grande City, Texas, Danville, Virginia, Iron Mountain, Michigan or Jacksonville, Florida; but only that in order to create a complete record, Powley should at the very least provide invoices, cancelled checks or other evidences of payment, and a statement from her "Settlement Facilitator" and her engineering consultant that the amounts claimed have been paid or have been paid in part and are still owing in part, or have not been paid and are due and owing.

For example, although Powley stated in her application that she prepared her own engineering, the owner of Television Marketing Company (TMC) has declared in his declaration that he charged her some \$19,000.00 for engineering services.¹ Although Powley certified that she had "prepared the [engineering section] of this application. . .", TMC nonetheless claims to have charged her \$5,200.00 for "complete engineering for new application".

Powley's summary of expenses for Slidell submitted with her Further Supplement lists a trip by car to Slidell (with a side trip

¹ These charges included "doing a tower placement study and interfacing with the FAA to obtain its approval" \$4,800.00, despite the fact that she proposed in her application to sidemount her antenna "at the 500-foot level on an existing 540-foot guyed tower."

to Galveston?) costing almost \$1,400.00 and including four persons, and a trip to Nashua, New Hampshire to interview her "Settlement Facilitator" for \$718.00. These are matters that beg for substantiation by air fare and hotel receipts. Undoubtedly Powley will want to provide the Commission with receipts, cancelled checks, etc., before a decision can be made as to whether such expenses were reasonably necessary to prosecution of her application.² In her Further Supplement, Powley has produced copies of several receipts and portions of receipts which show gasoline, office supplies (two data disks/film ribbon), various copying charges and a statement from DataWorld, but these are in no wise tied to Powley's Slidell application and in light of the six or seven other applications then pursued by Powley and her parents, the Commission is unable to determine the relevance to this proceeding.

Also in her Further Supplement, Powley has submitted copies of telephone bills for the periods February-November 1990, December 1991, January-November 1992 and January 1993. However, there is no specific designation as to whether she is claiming that all of these calls are attributable to her Slidell application or only a portion of them. Those checked are possibly to be considered by the Commission as Slidell-related, but examination reveals that the checked calls (and totals on each page) cannot reasonably apply to

² To date, the only hotel receipts provided specify Galveston, Texas, Boston, and Nashua, and are all in the name of John P. Powley, owner of WIIM(TV), Iron Mountain, Michigan.

Slidell: for example, there are 128 calls to Cary, North Carolina, dozens of calls to State College, Pennsylvania, and several calls to Australia.³ Indeed, the only calls readily identifiable with Powley's Slidell application are six calls to Slidell, totaling 17 minutes during the months of May, July and August of 1990; and two calls of 3 minutes to Lacombe, Louisiana in May of 1990. Other calls to the State of Louisiana include three to New Orleans, two to Baton Rouge, three to Kenner, LA, and one to Ferriday, all a considerable distance from Slidell.

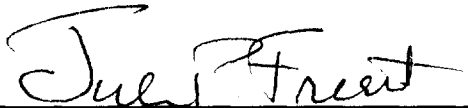
Powley is undoubtedly well intentioned in presenting claims for her alleged expenditures or obligations, but lacking cancelled checks, receipts, invoices, etc., she has placed the Commission in a position of inability to determine that her expenses were in fact legitimate and prudent under the circumstances, particularly in light of her employment of an engineering firm (despite the fact that she had produced her own engineering) and a "Settlement Facilitator" though represented by competent Washington counsel. The Presiding Judge may in the exercise of his responsibilities determine that a hearing session is in the public interest, wherein Powley will be afforded an opportunity to substantiate any expense claims lacking in apparent authenticity. Her engineering consultant and her "Settlement Facilitator" could be examined by

³ If Mitchell were to hazard a guess, it would be that the marked calls and total charges on each page relate to personal calls made by Powley on the John R. Powley telephone.

Commission counsel in an effort to establish a valid base for any possible review or appellate action.

Respectfully submitted,

TRUDY M. MITCHELL

By 
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March 10, 1993

CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that copies of the foregoing COMMENTS OF TRUDY M. MITCHELL were mailed this 10th day of March, 1993, to the offices of the following:

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